
Exemptions for Persons Employed in PERS Eligible Positions

Membership is Optional for Elected and Governor-Appointed Officials

All elected positions and positions appointed directly by the Governor are eligible positions by definition [RCW 41.40.010(25)(b)]. Elected and Governor-appointed officials are exempted from PERS membership unless they elect to join. They may apply for membership at any time during their current term of office. [RCW 41.40.023(3), WAC 415-108-560]

Other Optional Positions

The city manager or chief administrative officer of a city or town, other than a retiree, has the option of applying for membership within thirty days from the date of their appointment to such positions. [RCW 41.40.023(17)]. PERS membership is now optional for the chief administrative officer of a public utility district, port district or county, also within thirty days from the date of their appointment. [RCW 41.40.023(18)]

Current or Former PERS Members

Current members of PERS may continue membership by applying and being accepted into membership for their elected or Governor-appointed service. [RCW 41.40.023(3), WAC 415-108-550(2), 415-108-560(3)]

An elected or Governor-appointed official who elects to establish membership and holds, or previously held, PERS Plan 1 membership will return to membership in PERS Plan 1 even if the member withdrew funds from his or her retirement account.

New Members

An elected or Governor-appointed official who chooses to become a retirement system member but who has not been a member before will be enrolled in PERS Plan 2.

Current or Prospective Members of Higher Education Retirement Plans are Exempted from PERS

RCW 28B.10.400 authorizes the higher education institutions to make separate retirement income plans available to their professional and academic employees instead of PERS or TRS. The statute leaves it to the institutions to determine who is eligible to participate in a higher education retirement plan (HERP). Once a

higher education institution determines an employee is eligible for membership in a HERP, that employee is exempted from PERS membership if the employee is participating in a HERP.

A person may not participate in PERS if he or she is participating in a higher education retirement plan (HERP).

For many higher education institutions, participation in a HERP is optional during the first two years of employment. After that, participation is mandatory. For some higher education institutions, participation is required once eligibility is determined.

Higher education employees eligible to opt into a HERP are exempted from PERS during the two-year optional waiting period even if they never contribute to the HERP. [RCW 41.40.023(8)] Employees of community colleges, technical colleges and several of the four-year higher education institutions do not provide this option after January 1, 1997.

Note: Some HERP eligible employees may elect PERS membership. While most professional or academic employees must join the HERP, the institutions have provided an exception for new hires that have already established membership in PERS or TRS. Those employees are given the option to continue to participate in PERS or TRS under certain conditions (i.e.; they are employed in an “eligible position”). The employee defaults to the HERP unless he or she elects to continue participation in PERS or TRS.

If you encounter this situation, be sure to get a copy of the higher education institution’s rules. The rules can vary between institutions. For instance, the community and technical colleges allow non-vested PERS or TRS members to continue in PERS or TRS until they become vested. After becoming vested in PERS or TRS, they are allowed to transfer to TIAA/CREF.

Independent Contractors Exempted from PERS

Only an employee of a PERS employer is eligible for PERS membership. Because independent contractors are not employees, they are exempted from PERS membership. DRS applies the common law right of control test to determine if a worker is an employee or an independent contractor. Because of the complexity of the test, it is often difficult to determine if a person is an independent contractor without auditing the working situation.

If you have questions about determining if a person is an independent contractor, contact PERS Retirement Services.
[WAC 415-02-110]